

HOUSE BILL 1011  
By Kent

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6, relative to municipal electric plants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-52-103(c), is amended by adding the following at the end of the subsection:

Joint ventures authorized by this subsection shall not be entered into unless approved by referendum, as required by Article II, Section 24 of the Tennessee Constitution.

SECTION 2. Tennessee Code Annotated, Section 7-52-103(c), is further amended by deleting that subsection in its entirety and by substituting instead the following language:

(c) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized within its service area and on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to contract to establish a joint venture with one (1) or more third parties to provide the services authorized by § 7-52-601; provided, that with respect to cable services, at least one (1) such third party shall be a current franchise holder that has been providing services in

any state (either itself or its predecessor or predecessors) for not less than three (3) years at the time of the establishment of the joint venture. Any such joint venture shall be subject to the provisions of §§ 7-52-602 - 7-52-609.

SECTION 3. Tennessee Code Annotated, Section 7-52-103(c), is further amended by adding the following:

Joint venture agreements authorized by subsections (c) and (d) of this section shall be subject to the Open Records Law in § 10-7-503. Any joint venture agreement, including managerial and financial information on any prospective private joint venture partner, must be presented to the chief legislative body of the municipality in which the municipal electric system is located.

SECTION 4. Tennessee Code Annotated, Section 7-52-103(d), is amended by deleting that subsection in its entirety and by substituting instead the following language:

(d) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to establish a joint venture with one (1) or more third parties to provide related services, subject to the provisions of §§ 7-52-402 - 7-52-407. No contract or agreement between a municipal electric system and one (1) or more third parties for the provision of related services that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of gross revenues shall become effective or enforceable until the Tennessee regulatory authority approves such contract or agreement on petition, and after notice and opportunity to be heard has been extended to interested parties. Notwithstanding § 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any such joint venture provides related services, such joint venture and every member of such joint venture shall be subject to regulation by the Tennessee regulatory authority in

the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of related services. This provision shall not apply to any related service or transaction which is not subject to regulation by the Tennessee regulatory authority.

SECTION 5. Tennessee Code Annotated, Section 7-52-602(1), is amended by adding the following new sentence:

The municipal electric system shall provide a copy of the plan to all persons currently providing cable television service in the area in which the municipal electric system proposes to provide service pursuant to this part via certified mail, concurrently with its submission of such plan to the comptroller's office.

SECTION 6. Tennessee Code Annotated, Section 7-52-602(2), is amended by deleting the first sentence and substituting instead the following:

After review of the plan, the comptroller shall provide a written analysis of the feasibility of the proposed business plan to the chief legislative body of the municipality in which the municipal electric system is located and the governing board within sixty (60) days; provided, however, the calculation of the time to file the comptroller's written analysis shall not commence until the business plan is complete and until the municipal electric system has provided evidence to the comptroller's office that it has provided a copy of the plan to all persons currently providing cable television service in the area in which the municipal electric system proposes to provide service authorized by this part and in accordance with subsection (1) of this section.

SECTION 7. Tennessee Code Annotated, Section 7-52-602(4), is amended by deleting the final sentence and substituting instead the following:

A municipal electric system may provide additional services only after approval by a public referendum held pursuant to subsection (5) of this section.

SECTION 8. Tennessee Code Annotated, Section 7-52-602, is amended by adding a new subsection (6) as follows:

(6) A material change in the business plan submitted to the comptroller pursuant to subsection (1) shall render the business plan null and void, and any approvals of such business plan pursuant to this section shall be null and void. The business plan, as materially changed, shall be treated as a new business plan for purposes of this section.

(A) As used in this subsection, the term “material change” includes change in the geographical area to be served, a change in the source of capital, a change in the repayment terms or collateral used with respect to the borrowed funds, an increase in interest rate on borrowed funds of more than twenty-five (25) basis points or an increase of projected operating expenses of more than five percent (5%) for any of the years projected in the original business plan.

(B) As used in this subdivision, the term “business plan” means the detailed business plan described in subdivision (1).

SECTION 9. Tennessee Code Annotated, Section 7-52-603(b), is amended by designating the existing language as subdivision (b)(1) and adding the following as new, appropriately designated subdivisions:

(2) All expenses incurred by the municipal electric system in investigating and analyzing feasibility, legal issues, financing and other aspects of a proposal to provide services authorized by this part shall be fully allocated to the rates for such services.

(3) A municipal electric system shall not undertake such feasibility investigation and analysis unless approved by a two-thirds (2/3) majority vote of the chief legislative body of the municipality in which the municipal electric system is located. The chief legislative body of the municipality shall not consider approval of such funding unless a

description of the feasibility investigation and analysis proposed by the municipal electric system has been published at least two (2) weeks in advance of the meeting at which the chief legislative body proposes to consider the matter.

SECTION 10. Tennessee Code Annotated, Section 7-52-604(b), is amended by designating the existing language as subdivision (b)(1) and adding the following as new, appropriately designated subdivisions:

(2) Any municipal electric system providing services authorized by this part shall report to the comptroller's office, division of local finance, on an annual basis the following items:

(A) The name and address of all affiliated divisions;

(B) All contracts entered into by affiliated divisions, and all transactions undertaken with any affiliates without a written contract;

(C) The amount of affiliate transactions by affiliate, by account charged;

(D) The basis used to record affiliate transactions (i.e., book value, fair market value or fully distributed costs);

(E) Total costs allocated or charged back to each division;

(F) Updates of the allocation factors used to allocate costs between the electric system and the telecommunications division; and

(G) The results of an internal audit of the books, statements and records of the municipal cable system venture conducted by a certified public accountant in accordance with generally accepted accounting principles.

(3) An annual report to the comptroller's office shall be provided in writing to the comptroller's office, local finance division, within ninety (90) days of the end of the calendar year or the end of the fiscal year adopted by the municipal electric system, whichever is applicable.

(4) Within thirty (30) days of submission of the annual report to the comptroller, the chief legislative body of the municipality in which the municipal electric system is located shall hold a public meeting, at which time the municipal electric system shall present the same information contained in the report to the comptroller. Notice of the meeting described in the preceding sentence shall be published in a paper of general circulation in the city at least two (2) weeks in advance of the meeting.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.